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In re Application of:	McCollum, et al.	Date:	21 August 2007
Serial Number:	10/612,480	Group Art Unit:	2154
Filed:	July 1, 2003	Examiner:	Patel, A.B.
Title:	"Method and Code Module for Adding Function to a Webpage"	Attorney Docket No:	7791-A-1CON

## PETITION TO MAKE SPECIAL UNDER RULE 102(d)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

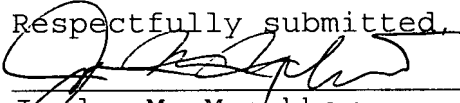
Pursuant to 37 C.F.R. §1.102(d), Applicants hereby petition the Commissioner to make the above-listed application special so that it may be taken out of turn for immediate action (it is awaiting issuance post payment of an issue fee). The grounds for this Petition are set forth in MPEP§708.02, section II, Infringement.

Enclosed with this Petition are:

1. A Statement of the undersigned attorney, Jordan M. Meschkow, setting forth, among other facts, the fact that he has knowledge that the invention sought to be patented in these applications is being infringed by a device in actual use that practices the method.
2. Authorization for payment of fees as set forth in 37 C.F.R. 1.17(i):

Applicants respectfully request that this Petition be promptly granted and that the above-listed application be taken up for examination at the earliest possible time.

Respectfully submitted,

  
Jordan M. Meschkow  
Attorney for Applicants  
Reg. No. 31,043

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Title:	<b>"Method and Code Module for Adding Function to a Webpage"</b>	Attorney Docket No:	<b>7791-A-1CON</b>

**STATEMENT OF JORDAN M. MESCHKOW IN SUPPORT OF  
PETITION TO MAKE SPECIAL UNDER RULE 102(d)**

I, Jordan M. Meschkow, state as follows:

- 1) I am an attorney of record in the above-listed patent application.
- 2) I have personally observed that there are devices, which infringe the methods claimed in the above-listed patent application in actual use; as proof of this, I submit a copy of a pending lawsuit.
- 3) I have made a rigid comparison of this device with the claims of the above-listed application, and, in my opinion, some of the claims are unquestionably infringed.
- 4) The Patent Office and I have made or caused to be made a careful and thorough search of the prior art and I have a good knowledge of the pertinent prior art based on the parent case prosecution in U.S. Patent No. 6,594,691, and the prosecution of U.S. Patent Application Serial No. 10/612,480, its continuation and now allowed with paid issue fee.

Date: \_\_\_\_\_

\_\_\_\_\_  
Jordan M. Meschkow, attorney of record



07 CV 7088  
Judge McMahon

**FOX ROTHSCHILD LLP**

Daniel Coughlin, Esquire (DC5830)

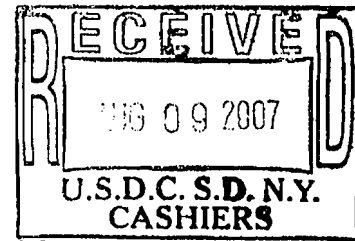
John Skinner, Esquire (JS9427)

100 Park Ave., Suite 1500

New York, New York, 10017

(212) 878-7900

Attorneys for Plaintiff



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MODAVOX, INC.

Plaintiff

v.

TACODA, INC.

Defendant.

Civil Action No. TBD

COMPLAINT

DEMAND FOR JURY TRIAL

**COMPLAINT AND DEMAND FOR TRIAL BY JURY**

Plaintiff, Modavox, Inc., by its attorneys and for its complaint, alleges as follows:

**PARTIES**

1. Plaintiff, Modavox, Inc. is a Delaware corporation, having its principle place of business at 4636 East University Drive, Suite 275, Phoenix, Arizona 80354. Plaintiff is the assignee of record of the full rights to and title in U.S. Patent No. 6,594,691 (hereinafter, "the '691 patent").

2. On information and belief, defendant Tacoda, Inc. (hereinafter, "Tacoda") is a Delaware corporation, having its principal place of business at 345 Seventh Avenue, 8th Floor, New York, New York 10001.

### **NATURE OF THE ACTION**

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281.

4. Plaintiff charges Tacoda with infringement of the '691 patent. (Exhibit 1). Plaintiff seeks a permanent injunction under 35 U.S.C. § 283 against continued infringement by Tacoda, its agents, servants, employees and assigns, and all those acting in concert with Tacoda.

### **JURISDICTION AND VENUE**

5. Jurisdiction over the subject matter hereof is conferred upon this court by 28 U.S.C. §§ 1331 and 1338(a), as patent infringement claims arise under the patent laws of the United States.

6. Venue in this judicial district is proper under the provisions of 28 U.S.C. §§ 1391(b) and (c) and 1400(b), because the '691 patent was infringed in the State of New York, and because Tacoda has its principal place of business within this district.

### **FACTUAL BACKGROUND**

7. Plaintiff is the sole owner of the '691 patent, which was duly and legally issued by the United States Trademark Office (hereinafter "USPTO"), and a copy of which is included as Exhibit 1. Plaintiff is also the sole owner of other related United States patent applications,

including serial number 10/612,480, for which a Notice of Allowance has been issued by the USPTO and issue fee paid; a copy of the allowed claims is attached hereto as Exhibit 2.

8. Upon information and belief, for a period of time, the length of which is unknown to Plaintiff prior to discovery, Tacoda has operated a business, for profit, that uses Plaintiff's technology claimed and described in the '691 patent. Tacoda has neither sought nor received authorization to use Plaintiff's patented technology.

### **COUNT ONE**

9. Plaintiff incorporates the allegations of Paragraphs 1-8 above as if fully set forth herein.

10. Tacoda makes, uses, sells, offers for sale and/or induces others to use in the United States, methods and related devices covered by one or more claims of the '691 patent.

11. Tacoda's actions thus constitute infringement of the '691 patent in violation of 35 U.S.C. § 271.

12. By reason of Tacoda's acts of infringement, Plaintiff has suffered and will continue to suffer monetary damages and irreparable harm.

### **PRAYER FOR RELIEF**

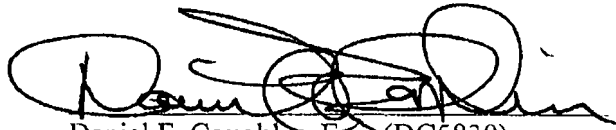
13. WHEREFORE, Plaintiff prays for a permanent injunction under 35 U.S.C. § 283 against continued infringement by Tacoda, its agents, servants, employees and assigns, and all those acting in concert with it; an accounting for compensatory damages, including interest and

costs under 35 U.S.C. § 284; and such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff Modavox, Inc. hereby demands a jury trial on all issues.

DATED: August 9, 2007

A handwritten signature in black ink, appearing to read 'Daniel F. Coughlin', is written over a horizontal line.

Daniel F. Coughlin, Esq. (DC5830)

John J. Skinner, Esq. (JS9427)

Fox Rothschild LLP

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New York, New York 10015

Telephone: (212) 878-7904

Facsimile: (212) 692-0940

Attorneys for Plaintiff

## **Amendments to the Claims**

1. A method of operating a computer network to add function to a Web page comprising:  
downloading said Web page at a processor platform, said downloading step being performed by a Web browser;  
when said Web page is downloaded, automatically executing a first code module embedded in said Web page;  
said first code module issuing a first command to retrieve a second code module;  
assembling, in response to said issuing operation, said second code module having a service response;  
said first code module issuing a second command to initiate execution of said second code module; and  
initiating execution of said second code module at said processor platform in response to said second command.
2. A method as claimed in claim 1 wherein said first code module issues said first command to retrieve said second code module from a server system via a network connection.
3. A method as claimed in claim 1 wherein said assembling operation is performed at a server system, and said method further comprises downloading said second code module to said processor platform.
4. A method of operating a computer network to add function to a Web page comprising:  
downloading said Web page at a processor platform, said downloading step being performed by a Web browser; when said Web page is downloaded, automatically executing a first code module embedded in said Web page;  
said first code module issuing a command to retrieve a second code module;  
receiving, at a server system, information characterizing at least one of said processor platform and said Web browser [[,]];

assembling, in response to said issuing operation, said second code module having a service response, said assembling operation being performed at a server system, and said assembling operation assembling said second code module in response to said information;

downloading said second code module to said processor platform; and

initiating execution of said second code module at said processor platform.

5. A method as claimed in claim 4 further comprising storing said information in a visitor database of said server system, said information being associated with a tracking index.

6. A method as claimed in claim 5 further comprising the steps of:  
applying said tracking index to said processor platform in response to said information; and  
using said tracking index at said server system to track and identify said processor platform.

8. A method as claimed in claim 1 wherein said Web browser employs HyperText Transfer Protocol (HTTP), said first code module and said Web page are generated in a HyperText Markup Language (HTML), and said first code module includes a comment tag informing said Web browser to ignore said second command.

9. A method as claimed in claim 1 wherein said method further comprises:  
receiving, at a server system, a Web address of said Web page;  
determining if said Web page is registered with said server system; and  
when said Web page is not registered, performing a registration of said Web page.

10. A method as claimed in claim 9 wherein said performing operation comprises:  
receiving said Web page at said server system;  
extracting informational content of said Web page;  
archiving said informational content of said Web page; and  
producing a profile of said Web page in response to said extracting and archiving steps.

11. A method as claimed in claim 10 wherein said service response is related to said profile of said Web page, and said method further comprises:



storing said service response in association with said Web address; and  
accessing said service response when said first code module issues said command so that said service response is included in said second code module.

12. A method as claimed in claim 1 wherein said service response is one of a denial of service indication, and conditional service indication, and a predetermined service.

13. A method as claimed in claim 1 further comprising presenting said service response at said processor platform in response to said initiating operation.

14. A method as claimed in claim 13 further comprising terminating said presenting operation upon detection, at said server system, of a terminate service response indicator from said processor platform.

15. A method as claimed in claim 1 wherein said service response is a metaphor, and said method further comprises the step of displaying said metaphor in connection with said Web page on said processor platform.

16. A method as claimed in claim 15 further comprising the step of customizing said metaphor to include a parameter set relevant to said Web page, said customized metaphor describing a conditional service presented upon execution of said second code module.

17. A method of operating a computer network to add function to a Web page comprising:  
downloading said Web page at a processor platform, said downloading step being performed by a Web browser;  
when said Web page is downloaded, automatically executing a first code module embedded in said Web page;  
said first code module issuing a command to retrieve a second code module;  
assembling, in response to said issuing operation, said second code module having a service response, said service response is a metaphor;  
initiating execution of said second code module at said processor platform;

displaying said metaphor in connection with said Web page on said processor platform;  
detaching said metaphor from said Web page; and  
displaying said metaphor disassociated from said Web page.

18. A method as claimed in claim 1 further comprising the steps of:  
executing said second code module in response to said initiating operation, said second code module including a Web address for a second Web page;  
downloading information content from said second Web page at said processor platform; and  
presenting said information content in said service response at said processor platform.

19. A computer readable code module for adding function to a Web page, said code module configured to be embedded in said Web page generated in a HyperText Markup Language (HTML) and configured for automatic execution when said Web page is downloaded to a client machine supporting a graphical user interface and a Web browser, said computer readable code module including:  
means for communicating a Web address of said Web page to a server system via a network connection to initiate a download of a second computer readable code module to said client machine;  
means for commanding an assembly, at said server system, of said second computer readable code module containing a service response related to said Web page;  
means for commanding a download of said second computer readable code module to said client machine;  
means for initiating execution of said second computer readable code module following said download of said second computer readable code module; and  
means for providing a comment tag informing said Web browser to ignore said initiating means.

20. A computer readable code module as claimed in claim 19 further comprising means for communicating information characterizing at least one of said Web browser and said client machine to said server system so that said assembled second computer readable code module is responsive to said information.

21. A method of operating a computer network to add function to a Web page comprising:

downloading said Web page at a processor platform, said downloading operation being performed by a Web browser;

when said Web page is downloaded, automatically executing a first code module embedded in said Web page, wherein execution of said first code module initiates retrieval of a second code module;

receiving, at a server system, information from said processor platform;

providing, from said server system, said second code module having a service response, said service response being formed in response to said information;

downloading said second code module to said processor platform; and

initiating execution of said second code module at said processor platform.

22. A method as claimed in claim 21 wherein said information received at said server system characterizes at least one of said processor platform and said Web browser.

23. A method as claimed in claim 21 further comprising:  
obtaining informational content of said Web page at said server system; and  
determining said service response related to said informational content.

24. A method as claimed in claim 21 further comprising:  
storing, at said server system, said service response in association with a Web address of said Web page; and  
said providing operation accesses said service response associated with said Web address so that said service response is included in said second code module.

25. A method as claimed in claim 21 wherein said service response is one of a denial of service indication, a conditional service indication, and a predetermined service.

26. A method as claimed in claim 21 further comprising presenting said service response at said processor platform in response to said initiating operation.

27. A method as claimed in claim 26 further comprising terminating said presenting operation upon detection, at said server system, of a terminate service response indicator from said processor platform.

28. A method as claimed in claim 21 wherein said service response is a metaphor, and said method further comprises the step of displaying said metaphor in connection with said Web page on said processor platform.


29. A method as claimed in claim 28 further comprising:  
detaching said metaphor from said Web page; and  
displaying said metaphor disassociated from said Web page on said processor platform.

30. A method as claimed in claim 21 wherein said second code module includes a Web address for a second Web page, and said method further comprises:  
downloading information content from said second Web page at said processor platform in response to said execution of said second code module; and  
presenting said information content in said service response at said processor platform.



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Serial Numbers: <b>10/612,480</b>	Group Art Unit: <b>2154</b>
Filed: <b>July 1, 2003 and August 1, 2007, respectively</b>	Examiner:
Title: <b>"Method and Code Module for Adding Function to a Webpage"</b>	Attorney Docket No: <b>7791-A-1CON</b>

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450 on: 22 August 2007.

  
Signature

22 August 2007  
Date of Signature

**LITIGATION STATEMENT PURSUANT TO 37 C.F.R.  
§1.56 and MPEP 2001.06(c)**

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. § 1.56 and MPEP 2001.06(c), this Litigation Statement (sans an attached Information Disclosure Statement Form - since all art is matter of record, already) is being brought to the attention of the Examiner for consideration in connection with the above-identified patent application. A copy of the cited document is enclosed.

The filing of this Litigation shall not be construed to be an admission that the information cited in this statement is, or

LITIGATION AND INFORMATION DISCLOSURE STATEMENT

SERIAL NO: 10/612,480

Page: 2

is considered to be, material to patentability as defined in 37 C.F.R. § 1.56(b).

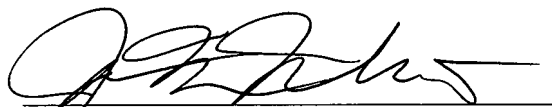
The above-listed U.S. patent applications claim priority to U.S. Patent No. 6,594,691, filed 28 October 1999. This patent also serves as a priority document for 10/612,480, which has been allowed and now has a paid issue fee. The Litigation Statement enclosed herewith is the Complaint filed August 9, 2007 attached to a Petition to Make Special statement. This Complaint alleges, among other things, that a third-party company is infringing the Patent No. 6,594,691, and the instant continuation application, as well as others.

The below-listed attorney of record states that no item of information contained in an information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the below-listed attorney of record after making reasonable inquiry, no item of information contained in an information disclosure statement was known to any individual designated in 1.56(c) more than three months prior to the filing of the information disclosure statement.

This Litigation Statement is believed to have no impact on the currently-pending applications in this matter. Applicant desires that said applications continue to a speedy conclusion, as the invention in this matter has now been pending for over 7½ years.

Respectfully submitted,

22 August 2007  
Date

  
Jordan M. Meschkow  
Attorney for Applicants  
Reg. No. 31,043